
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 5:23-cv-00574-FWS-MAA
Title: Leon Atkins v. Linesey McDowell *et al.*

Date: November 17, 2023

Present: **HONORABLE FRED W. SLAUGHTER, UNITED STATES DISTRICT JUDGE**

Melissa H. Kunig
Deputy Clerk

N/A
Court Reporter

Attorneys Present for Plaintiff:

Not Present

Attorneys Present for Defendants:

Not Present

**PROCEEDINGS: ORDER TO SHOW CAUSE WHY ACTION SHOULD NOT BE
DISMISSED FOR LACK OF PROSECUTION**

The court briefly reviews the relevant background. On March 27, 2023, Plaintiff Leon Atkins (“Plaintiff”) filed a Complaint and Request to Proceed Without Prepayment of Filing Fees (“IFP Request”). (Dkts. 1, 2.) On May 19, 2023, the court postponed ruling on Plaintiff’s IFP Request and ordered that Plaintiff submit a certified copy of a trust fund statement for the last six months within thirty days of the Order, or by June 19, 2023. (Dkt. 5.) On June 5, 2023, Plaintiff filed a second IFP Request attaching two documents: (1) an order slip from the Robert Presley Detention Center showing that Plaintiff purchased an “indigent kit” for \$0.00 on May 2, 2023; and (2) another order slip showing that Plaintiff purchased a second “indigent kit” for \$0.00 on May 25, 2023. (Dkt. 7.) Neither document is a certified copy of a trust fund statement for the last six months. (*Id.*)

On August 17, 2023, the court ordered Plaintiff to show cause in writing (“OSC”) why this case should not be dismissed for lack of prosecution because Plaintiff had not filed any additional documents supplying a certified copy of a trust fund statement. (Dkt. 8.) On August 28, 2023, the mailing containing the OSC was returned. (Dkt. 9.) The same day, Plaintiff filed a notice of change of address. (Dkt. 10.)

As a result Plaintiff’s change in address, on October 3, 2023, the court again ordered Plaintiff to show cause in writing by November 3, 2023, why this action should not be dismissed for lack of prosecution. (Dkt. 11.) The court’s Order indicated Plaintiff could

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discharge the Order to Show Cause by filing a certified copy of a trust fund statement for the last six months that complies with the court’s May 19, 2023, Order. (*Id.*) The Order also stated that “failure to adequately comply with the court’s order may result in dismissal.” (*Id.* at 2.) Plaintiff did not file any response to the court’s Order to Show Cause but did file a “Notice of Change of Address” on October 9, 2023. (Dkt. 12.)

Based on Plaintiff’s intervening change in address, the court again **ORDERS** Plaintiff to respond to the court’s August 17, 2023, Order to Show Cause in writing by **December 29, 2023**. Plaintiff may discharge the Order to Show Cause by filing a certified copy of a trust fund statement for the last six months that complies with the court’s May 19, 2023, Order. Failure to adequately comply with the court’s order may result in dismissal. *See Fed. R. Civ. P. 41(b); Link v. Wabash R.R. Co.*, 370 U.S. 626, 629 (1962) (“The authority of a federal trial court to dismiss a plaintiff’s action with prejudice because of his failure to prosecute cannot seriously be doubted.”); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (“[C]ourts may dismiss under Rule 41(b) *sua sponte*, at least under certain circumstances.”); *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984) (“It is within the inherent power of the court to *sua sponte* dismiss a case for lack of prosecution.”).

The court also **ORDERS** the Clerk to re-serve Plaintiff at the address listed in his October 9, 2023, Notice of Change of Address with copies of the following documents: (1) the court’s August 17, 2023, Order to Show Cause, (Dkt. 8); and (2) the court’s October 3, 2023, Order to Show Cause, (Dkt. 11.)

IT IS SO ORDERED.

Initials of Deputy Clerk: mku